Supreme Court of the United States.

No. 273.—October Term, 1903.

Granville Rippey, Plaintiff in Error
vs.
The State of Texas.
} In error to the Court of Criminal Appeals of the State of Texas.

[March 21, 1904.]

Mr. Justice Holmes delivered the opinion of the Court.

The plaintiff in error was convicted of selling intoxicating liquors contrary to vote of his precinct prohibiting such sale. This vote was in pursuance of a statute which the plaintiff in error alleges to be contrary to the Fourteenth Amendment of the Constitution of the United States. The question was raised at the outset by a motion to quash, which was overruled subject to exception, the exception was overruled on appeal, and the case was brought here by writ of error.

The Constitution of Texas, Art. 16, sect. 20, required the Legislature to enact a law by which the majority of qualified voters of any county, justice's precinct, town or city, from time to time might determine whether the sale of intoxicating liquors should be prohibited. The Legislature thereupon enacted what now are Articles 3384–3399 of the Revised Statutes, and Articles 402–407 of the Penal Code. These all are assailed, but the particular object of attack is Art. 3395.

Article 3395 is as follows:

Art. 3395. [3238] The failure to carry prohibition in a county shall not prevent an election for the same being immediately thereafter held in a justice's precinct or subdivision of such county as designated by the commissioners' court, or of any town or city in such county; nor shall the failure to carry prohibition in a town or city prevent an election from being immediately thereafter held for the entire justice's precinct or county in which said town or city is situated; nor shall the holding of an election in a justice's precinct in any way prevent the holding of an election immediately thereafter for the entire county in which the justice's precinct is situated; but when prohibition has been carried at an election ordered for the entire county, no election on the question of prohibition shall be thereafter ordered in any justice's precinct, town or city of said county until after prohibition has been defeated at a subsequent election for the same purpose, ordered and held for the entire county, in accordance with the provisions of this title; nor in any case where prohibition has carried in any justice's

precinct shall an election on the question of prohibition be ordered thereafter in any town or city of such precinct until after prohibition has been defeated at a subsequent election ordered and held for such entire precinct.

It will be seen that this section discriminates in favor of those who vote for prohibition; and the argument is that since the Legislature was not authorized to pass a prohibitory law, *Dawson* v. *State*, 25 Texas Crim. Rep. 670, 674, 675, but was required to leave the question to a local vote, it necessarily created a pure democracy to that extent, and therefore could not interfere with the equality of the voters in their right to propose or carry a law. Many questions would have to be answered before so speculative a piece of ratiocination could be followed. But we think it may be dealt with in short space, so far as is necessary to decide this case.

We follow the State Court of course, as to the State Constitution, and assume that the law is not invalid under that. The question for us is whether, if the State Constitution undertakes to authorize such a law, it encounters the Constitution of the United States. It is a question of the power of the State as a whole. *Missouri* v. *Dockery*, 191 U. S. 165, 171. But the State has power to prohibit the sale of intoxicating liquors altogether, if it sees fit, *Mugler* v. *Kansas*, 123 U. S. 623, and that being so it has power to prohibit it conditionally. It does not infringe the Constitution by giving those in favor of the sale a chance which it might have denied. It is true that the greater does not always include the less. A man may give his property away, yet he may not contract with a carrier to take the risk of the latter's negligently injuring it, or part with it on the valuable consideration of a wager. But in general the rule holds good. It does here. The State has absolute power over the subject. It does not abridge that power by adopting the form of reference to a local vote. It may favor prohibition to just such degree as it chooses, and to that end may let in a local vote upon the subject as much or as little as it may please. There is no such overmastering consideration of expediency attaching everywhere and always to the form of voting, still less is there any such principle to be drawn from the Fourteenth Amendment, as requires the two sides of a vote on prohibition to be treated with equal favor by the State, the subject matter of the vote being wholly within the State's control. The only chance for the plaintiff in error to prevail was under the State Constitution. He has no case under the Constitution of the United States.

Judgment affirmed.

True copy.

Test:

Clerk Supreme Court, U. S.